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DEC 22 2003

OFFICE OF PETITIONS

In re Application of :
Andrew T. Busey et al :SUBSTITUTE DECISION
Application No. 09/060,867 :GRANTING PETITION
Filed: April 15, 1998 :UNDER 37 CFR 1.137(b)
Attorney Docket No. 004068.P004X :
:

This is a substitute decision on the petition under 37 CFR 1.137(b), filed January 7, 2002, to revive the above-identified application. The second petition under 37 CFR 1.137(b), filed on August 12, 2003 will be treated as a supplement to the petition filed on January 7, 2002.

The petition is granted.

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the final Office action mailed July 19, 2000, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on October 20, 2000. A Notice of Abandonment was mailed on May 18, 2001.

As this application became abandoned for failure to timely reply to the final Office action of July 19, 2000, the proposed response required for consideration of a petition to revive must be a Notice of Appeal (and fee required by law); an amendment under 37 CFR 1.116 that cancels all the rejected claims or otherwise *prima facie* places the application in condition for allowance; the filing of a request for continued examination (RCE) (accompanied by a submission and the requisite fee) under 37 CFR 1.114 (for utility or plant applications filed on or after June 8, 1995); or the filing of a continuing application under 37 CFR 1.53(b). Therefore, since the reply filed on January 7, 2002 did not *prima facie* place the application in condition for allowance, as noted in the Advisory Action mailed March 20, 2002,

the petition filed on January 7, 2002 to revive the instant application was improperly granted. Accordingly, the decision mailed March 11, 2002 granting the petition to revive is vacated.

The supplemental petition to revive filed on August 12, 2003 was accompanied by a Request for Continued Examination (RCE) under 37 CFR 1.114, along with a request that the amendment previously filed on January 7, 2002 (certificate of mailing date of December 12, 2002) be considered as the reply under 37 CFR 1.116.¹

Accordingly, since the petition now satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an RCE and submission under 37 CFR 1.114; (2) the petition fee; and (3) the required statement of unintentional delay have been received, the reply to the final Office action of July 19, 2000 is accepted as having been unintentionally delayed.

As the petition fee was previously submitted with the petition of January 7, 2002, the \$1,300 petition fee received on August 12, 2003 is unnecessary and will be refunded to petitioner's deposit account.

This application is being forwarded to Technology Center AU 2155 for processing the RCE filed August 12, 2003.

Any inquiries specific to this decision should be directed to the undersigned at (703) 305-8680.


Frances Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

¹ Receipt of an Information Disclosure Statement on August 12, 2003 is also acknowledged.

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REQUEST FOR PATENT FEE REFUND

1 Date of Request: 12-00-03 2 Serial/Patent # 09/1060867

3 Please refund the following fee(s):	4 PAPER NUMBER	5 DATE FILED	6 AMOUNT
Filing			\$
Amendment			\$
Extension of Time			\$
Notice of Appeal/Appeal			\$
<input checked="" type="checkbox"/> Petition	22	8/12/03	\$ 1300
Issue			\$
Cert of Correction/Terminal Disc.			\$
Maintenance			\$
Assignment			\$
Other			\$

7 TOTAL AMOUNT OF REFUND \$ 1300

8 TO BE REFUNDED BY:

Treasury Check

Credit Deposit A/C #:

9 02-24666

10 REASON:

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Duplicate Payment

No Fee Due (Explanation):

Fee previously paid on 3-1-7-02,

11 REFUND REQUESTED BY:

TYPED/PRINTED NAME: F. Nichols

TITLE: Act 84/N

SIGNATURE: F. Nichols

PHONE: 305-8680

OFFICE: 470

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APPROVED: Alma Kelly

DATE: 12/22/03

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